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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,686	06/26/2003	Mario Sacchetti	US 18007 DIV	5320
34872	7590	03/25/2005	EXAMINER	
BASELL USA INC. INTELLECTUAL PROPERTY 912 APPLETON ROAD ELKTON, MD 21921			CHOI, LING SIU	
			ART UNIT	PAPER NUMBER
			1713	

DATE MAILED: 03/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/606,686	<b>Applicant(s)</b> SACCHETTI ET AL.	
	<b>Examiner</b> Ling-Siu Choi	<b>Art Unit</b> 1713	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2003.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 34 and 35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 34 and 35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☒ Certified copies of the priority documents have been received in Application No. 09/763,218.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/02/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

*2c*

**DETAILED ACTION**

1. This Application is a Division of 09/763,218, filed February 16, 2001, now US Patent Number 6,627,710, which is a 371 of PCT/EP00/05349, filed June 8, 2000.
2. This Office Action is in response to the Preliminary Amendment filed June 26, 2003. Claims 1-33 were canceled and claims 34-35 have been added. Claims 34-35 are now pending.

***Claim Rejections - 35 USC § 102***

3. **The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:**

**A person shall be entitled to a patent unless --**

**(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.**

4. Claims 34-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Sacchetti et al. (EP 0 601 525 A1).

**Polymer**

being obtained in the presence of a catalyst comprising the product of aluminum alkyl compound and catalyst component [Ti, Mg, and Cl]; and having the following properties:

<b>surface area</b> (BET method)	< 100 m <sup>2</sup> /g
<b>total porosity</b> (mercury method)	> 0.25 cm <sup>3</sup> /g
<b>pore radius distribution</b>	at least 45% pore radius up to 0.1 μm

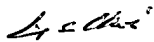
(summary of claim 34)

Sacchetti et al. disclose a polymer product obtained in the presence of a spherical solid catalyst which has the following properties: surface area (BET method) < 70 m<sup>2</sup>/g ; total porosity (mercury method) > 0.5 cm<sup>3</sup>/g; pore radius distribution of at least 50 % pore radius higher than 0.8 μm (abstract; claim 1). Sacchetti et al. further disclose that the spherical solid catalyst is obtained by the reaction of a MgCl<sub>2</sub> · mROH compound ( i.e. MgCl<sub>2</sub> · EtOH), an Al-alkyl compound ( i.e. Al-triethyl, Al-triisobutyl, or Al-tri-n-butyl), and a titanium compound of Ti(OR)<sub>n</sub>X<sub>y-n</sub> (i.e. TiCl<sub>4</sub>) (page 3, lines 39-42; page 4, lines 36-40; Example 1; claim 17). It is noted that 50% of the porosity is due to pore with radius greater than 0.125 μm (Example 1), which implies that 50% of the porosity is attributed to the pore with radius up to 0.125 μm. In view of the fact that the catalyst is substantially identical to the catalyst of the present invention, the polymer would be identical to the polymer made by the present invention. Since the PTO does not have proper means to conduct experiments, the burden of proof is now shifted to applicants to show otherwise. **In re Best**, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977); **In re Fitzgerald**, 205 USPQ 594 (CCPA 1980).

***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ling-Siu Choi whose telephone number is 571-272-1098.

If attempt to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu, can be reach on 571-272-1114.



**LING-SUI CHOI**  
**PRIMARY EXAMINER**

March 15, 2005